IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPEALLATE SIDE JURISDICTION

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.1544 OF 2004
IN
SUIT NO.434 OF 2003

ICICI Bank Limited ..Plaintiffs
Vs.
Mardia Chemicals Ltd. & Ors. ..Defendants

Mr.B.B.Saraf with S. Chandaratre and Ms. Nita Gaglani i/b. M.K. Ambalal & Co. for plaintiffs

Mr.S. Shetye with B.B. Parekh for defendant no.1
Mr.M.V. Deshmukh, Court Receiver present in Court.

CORAM: S.U.KAMDAR,J.
DATED: 18TH JANUARY, 2005.

P.C.

. By the present chamber summons the plaintiffs are challenging a part of the order dated 21st September, 2004 passed by the Court Receiver by which directions are given by the Court Receiver to the plaintiffs to give an indemnity bond and undertaking in respect of the properties of which he is appointed as receiver. It has been contended by the learned counsel for the plaintiff that once the Court Receiver is appointed in respect of the said properties then the possession of the properties are vested in the Court Receivers and the plaintiff cannot be directed to give indemnity bond and/or undertaking for any loss or theft in respect of the properties of which Receiver is appointed as Court

Receiver. On the aforesaid ground the present chamber summons has been taken out for setting aside a part of the directions issued by the Court Receiver.

2. The Court Receiver who is present before me has drawn my attention to an order dated 20th August, 1997 passed by the Administrative Judges in exercise of the administrative jurisdiction conferred on the High Court. Under the said order it has been provided that whenever the court receiver is appointed as a receiver in respect of the properties and assets then the court receiver shall not take physical possession there of till the time the party at whose instance receiver is appointed provide its cost and also appoint security agent. It was further provided that the court receiver should insist for indemnity and undertaking from the security agent so provided and/or appointed in respect of the said property on such terms and conditions as court receiver may fix. It has been further provided in the said order that if such security guard are not appointed then the Receiver should take steps for vacating the order of his appointment by moving the Court who has appointed him as Receiver of the said properties.

3. The learned Counsel appearing for the defendant has contended that in fact the indemnity

bond and undertaking should be given by the plaintiff because at their instance court receiver has been appointed. He has further contended that the indemnity bond and/or undertaking by the security agency is no good because the assets for which the court receiver is appointed is in excess of Rs.1000 crores. It is therefore, contended that plaintiff should be made responsible for the purpose of loss which may be suffered due to any theft of any of the assets of the company of which the Court Receiver, High Court, Bombay is appointed as Court Receiver. It has been contended by the learned Counsel for the defendant that if the plaintiff is not inclined to give an indemnity or undertaking as directed by the Court Receiver then the plaintiff should not be permitted to continue with the appointment of Receiver and the said order should be vacated.

4. At the outset I am not inclined to accept the contention of the learned Counsel for defendant for the simple reason that once the Court Receiver is appointed as Receiver then the possession of the properties passed on to the Court Receiver and the plaintiffs are not at all in possession thereof. In view thereof to hold that the plaintiff should be made liable for any such losses occurred due to theft of the assets of the company in custody of the Court Receiver by obtaining indemnity bond or

undertaking to my mind is totally an erroneous argument. It is obvious that the person in possession of the property must protect the property and if there is any theft or offence it a person who is in possession should be held responsible and liable for the same. In view of the fact that the security agency is appointed to safeguard and protect the property by the Court Receiver at the suggestion of the plaintiff. It is the security agency who should be held responsible for any loss or theft if occurred in future in respect of the assets which are in possession of the Court Receiver, High Court, Bombay. Order passed on 20th August, 1997 by Administrative Judges of this Court also interalia provides that the indemnity bond and/or undertaking should be obtained from the security agency and not from the plaintiff herein. In view of the aforesaid position I am of the opinion that the Court Receiver, High Court, Bombay shall obtain indemnity bond and/or undertaking from the security agency which will be appointed in respect of the said assets of which he has been appointed as receiver. The Court Receiver will not insist for indemnity bond or undertaking from the plaintiff.

5. So far as the insurance charges are concerned for insuring the property, the Court Receiver, High Court, Bombay is directed to insure

the properties and that the plaintiffs have agreed to make payment of necessary charges including premium for the same. In view of the aforesaid, the chamber summons is disposed of accordingly.

6. Learned Counsel for the defendants seeks stay of this order, I do not see any reason to stay the same therefore, the application for stay is rejected.

JUDGE